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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Stainless Steel Wire Rod from India for the Period December 1, 2002, through November 30, 2003

Summary

We have analyzed the case and rebuttal briefs of interested parties in the December 1, 2002, through November 30, 2003, administrative review of the antidumping duty order covering stainless steel wire rod from India. As a result of our analysis, we have made changes, including the correction of a clerical error, in the margin calculations. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

A. Issue with regard to Chandan

Comment 1: Constructed-Value Profit Rate

B. Issues with regard to Isibars

Comment 2: U.S. Movement Expenses
Comment 3: Unreconciled Cost Difference
Comment 4: Debt-Restructuring

C. Issues with regard to Viraj

Comment 5: Review of Tax Returns at Verification
Comment 6: Collapsing of VAL and VSL
Comment 7: Request for Additional Sales and Cost Data
Comment 8: Revocation
Comment 9: Credit Expenses
Comment 10: Indirect Selling Expenses Incurred in the Country of Manufacture
Comment 11: Direct Material Costs
Comment 12: Costs of Affiliated Power Company
Comment 13: VAL's Fixed Overhead Costs
Comment 14: Interest Expenses
Comment 15: G&A Expenses
Comment 16: Duty Drawback
Comment 17: Constructed-Value Profit Rate
Comment 18: Clerical Error in the Calculation of CEP-Profit

Background

On January 7, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from India (70 FR 1413) (*Preliminary Results*). The review covers three manufacturers. The period of review is December 1, 2002, through November 30, 2003. We invited interested parties to comment on the *Preliminary Results*. We received case and rebuttal briefs from various parties.

Company Abbreviations

Chandan – Chandan Steel, Ltd.
Isibars – Isibars Limited
Viraj – Viraj Alloys, Ltd., and VSL Wires, Ltd.
VAL – Viraj Alloys, Ltd.
VSL – VSL Wires, Ltd.
Petitioner – Carpenter Technology Corporation

Other Abbreviations

CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – U.S. Court of International Trade
COM – cost of manufacture
COP – cost of production
DIFMER – difference in merchandise
FOB – free on board
G&A – general and administrative
ITC – International Trade Commission
POR – period of review
The Act – The Tariff Act of 1930, as amended

Discussion of the Issues

A. Issues with regard to Chandan

Constructed-Value Profit Rate

Comment 1: The petitioner states that, since the *Preliminary Results* (in which the Department determined that it could not calculate Chandan's surrogate constructed-value-profit margin based on the experiences of other respondents participating in the current review and used the public financial statements of another Indian producer), the Department has calculated a margin and assessment rate for Isibars, one of the other respondents in the current review. The petitioner argues that, if the Department calculates average selling expenses and profits on the foreign like product for sales in the ordinary course of trade for both Viraj and Isibars, the Department can calculate the weighted average of those respondents' data to impute constructed-value profit for Chandan under section 773(e)(2)(B)(ii) of the Act. The petitioner claims that there are significant issues left to be resolved for Viraj and asserts alternatively that, if after all proposed changes are made, there are no sales in the ordinary course of trade for either Viraj or

Isibars, the Department should consider alternative methodologies to impute constructed-value profit. Accordingly, the petitioner offers alternative methodologies.

Chandan argues that the alternative financial statements proposed by the petitioner are for companies that are not representative of Chandan. Further, although Chandan argues that Sunflag Iron and Steel Co., Ltd., Viraj, Mukand, and Isibars are comparable to Chandan, Chandan also asserts that its own financial statements offer the requisite specificity. The petitioner responds that the use of Chandan's own financial statements is impermissible under section 773(e)(2)(B)(I) of the Act.

Department's Position: In the *Preliminary Results*, the Department was unable to calculate a constructed-value-profit figure for Chandan based on its submitted data because Chandan had neither home-market sales nor sales to a third country. Additionally, because the Department applied total adverse facts available to Isibars for the *Preliminary Results*, it could not use Isibars's profit rate. Further, although the Department calculated a margin for Viraj, the Department was unable to use Viraj's profit rate without revealing business-proprietary information. Accordingly, the Department was unable to use the data of other respondents in the current review to calculate a surrogate constructed-value-profit rate and, therefore, the Department relied on the public financial statements of another Indian producer.

Subsequently, the Department verified the post-*Preliminary Results* supplemental questionnaire responses filed by Isibars. Because the Department has determined that both Viraj and Isibars had sales in the ordinary course of trade, the Department has used their sales data to compute the constructed-value-profit rate for Chandan. Specifically, in accordance with section 773(e)(2)(B)(ii) of the Act, we used the weighted-average actual profit incurred and realized by

Viraj and Isibars. Accordingly, we have not considered the alternative methodologies suggested by either the petitioner or Chandan.

B. Issues with regard to Isibars

U.S. Movement Expenses

Comment 2: The petitioner argues that the inspection fees Isibars paid to Indian customs are direct selling expenses because they were incurred for actual shipments and would not have been incurred but for those particular shipments having been sent through customs. As direct selling expenses required for processing through Indian customs, the petitioner argues, they should be treated as movement expenses like foreign duty or brokerage fees. Consequently, the petitioner argues, the Department should allocate these expenses over the total volume of exports or, if that is not available, over the total quantity exported to the United States.

Isibars did not comment on this issue.

Department's Position: We agree with the petitioner that it is appropriate to treat the inspection fees as movement expenses. Consequently, we have excluded the inspection charges from indirect selling expenses and allocated them to domestic brokerage and handling charges. Because the expenses were incurred for all exports, we allocated those expenses over all exports, not just exports to the United States. For a detailed discussion of this issue, see "Final Analysis Memorandum of Isibars Limited for Stainless Steel Wire Rod from India – Adm. Rev. 12/1/02 - 11/30/03", dated July 6, 2005, at 3.

Unreconciled Cost Difference

Comment 3: The petitioner argues that, because the Department eliminated inter-company transfers and non-subject merchandise to arrive at the net POR costs, the Department should adjust the COM for the unreconciled difference using the adjusted extended COP and constructed-value amounts as the denominator for the calculation. Citing the *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Brazil*, 63 FR 12744, 12749-12750 (March 16, 1998) (*Carbon Steel Plate*), the petitioner claims that it is the Department's practice to adjust reported costs to exclude non-subject merchandise and profit and loss from inter-company transfers.

Isibars did not comment on this issue.

Department's Position: We disagree with the petitioner and have continued to adjust the COM for the unreconciled difference based on total reported costs, not total costs for all products. At verification we observed that Isibars accumulates costs in its normal books and records based on divisions (*i.e.*, stainless steel and bright bars or steel melt shop, rolling mill division, bright bars, post-rolling mill, and head office), not by products produced. Isibars used the same methodology when allocating its costs from the divisions to subject and non-subject merchandise. We found at verification that Isibars had transferred the amounts in its normal books and records to the reconciliation that reflects normal cost-allocation methodologies. We reconciled Isibars's total reported costs to its audited financial statements and observed that the unreconciled difference relates to all products the company produced and not just subject merchandise. If Isibars's normal cost accumulation by division delineated product-specific costs and if it had been able to use this type of data for the reconciliations, it may have been appropriate to allocate the unreconciled difference to only one product group. This was not the case, however; thus, the unreconciled difference relates to all products produced and not just the subject merchandise, and we have continued to adjust the COM for the unreconciled difference based on total POR cost.

We agree with the petitioner that it is our practice to adjust reported costs to exclude non-subject merchandise and profit and loss from inter-company transfers as was done in *Carbon Steel Plate*. We applied the same practice in this case in the post-*Preliminary Results* calculation as well as in these final results. This practice is unrelated to the allocation of unreconciled costs.

Debt-Restructuring

Comment 4: The petitioner argues that the Department should recalculate Isibars's interest expense exclusive of the claimed debt-restructuring gain. The petitioner claims that the plan to restructure Isibars's debt was approved after the POR in 2004, the plan was not implemented or recognized in Isibars's 2003-2004 financial statements, and the only information on the record of the potential implementation of the debt restructuring is a note on a set of unaudited financial statements. The petitioner asserts that it is the Department's practice to offset financial expense by the current portion of the gain from restructured debt and cites the *Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From India*, 68 FR 41303 (July 11, 2003), and the accompanying Issues and Decision Memorandum at comment 13 (*Mushrooms From India*), and the *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 41437 (July 5, 2000), and the accompanying Issues and Decision Memorandum at comment 26. The petitioner contends that, for the Department to recognize even a partial gain on debt restructuring, the plan must be implemented and cites the memorandum regarding the COP and

Constructed-Value Calculation Adjustments for the Final Results from Mark J. Todd to Neal M. Halper, dated July 7, 2003, in *Mushrooms From India*.

Isibars states that the Department was correct to allow the exclusion of the interest expense related to the loans that are being restructured because the restructuring plan is approved, the implementation of the restructuring plan is imminent, and a period used for the calculation of the financial expense in this review (FY 2003-2004) was included in the debt-restructuring plan.

Isibars maintains that its restructuring plan was approved by the Corporate Debt Restructuring Cell (CDR) on February 4, 2004. Isibars asserts that the case mentioned by the petitioner differs because its loan is with the CDR while the respondent's loan in *Mushrooms From India* was with the ICICI Bank Limited (ICICI). Isibars asserts that the approved debt-restructuring plan involves five financial years from April 1999 to March 2004 and that the debt-restructuring waivers will be allocated proportionately over the five-year period.

Contrary to the petitioner's claim that the only evidence of the debt restructuring is a note on a set of unaudited financial statements, Isibars points out that its quarterly unaudited financial results which the Department obtained at verification discusses the implementation of the debt restructuring and states in note four that the financial results underwent a "Limited Review" by the statutory auditors and contains the auditor's seal.

<u>Department's Position</u>: Based on the information on the record, we have not adjusted Isibars's financial-expense ratio for the claimed waived interest expense. Documentation obtained at verification confirmed that Isibars's debt-restructuring plan, although approved by the CDR Empowered Group on February 4, 2004, has yet to be implemented. According to Isibars's

audited fiscal-year financial statements ending March 31, 2004, Isibars must receive approval letters from each of its bankers before the restructuring plan can be considered officially finalized. This is precisely why the debt restructuring was not reflected in its March 31, 2004, audited financial statements. At verification, Isibars was unable to show that these required letters from its bankers were received subsequent to the finalizing of its March 31, 2004, audited financial statements. In addition, contrary to Isibars's claim, the submitted quarterly financial statements for the quarter ended September 30, 2004, do not indicate that the debt-restructuring plan had officially taken effect. The quarterly financial statements to which Isibars refers at note 2 indicates specifically how the waived interest expense will be treated after implementation of the proposed debt-restructure scheme. See exhibit 22 of Isibars's cost verification report, dated May 3, 2005, for the quarterly financial statements. The key aspect of the language at note 2 is that it speaks in terms of post-implementation status, which we interpret to mean that it still had not taken effect officially. As the scheme had not been officially implemented as of September 30, 2004, nothing has changed from the issuance of the audited March 31, 2004, financial statements with regard to implementation of the debt restructuring. Because record evidence does not support that the waiver has yet to occur officially, there is no subsequent event (*i.e.*, waived interest expense resulting from its debt restructuring) to consider in determining the computation of the company's interest expense. Accordingly, for the final results we have relied on the interest expense as recorded in the company's audited March 31, 2004, financial statements.___

B. Issues with regard to Viraj

Review of Tax Returns at Verification

Comment 5: The petitioner argues that the Department should find that VSL failed verification and use the facts otherwise available in order to calculate its final results for this company. It asserts that Viraj's explanation at verification that it was not able to reconcile its tax returns to its financial records due to the different methodologies employed in preparing the two types of documents was not reasonable and that the very nature of such a reconciliation would have been the explanation of differences between the documents. According to the petitioner, such differences could have been the basis for evaluating the completeness and accuracy of sales and cost reporting. The petitioner argues that Viraj's refusal to reconcile its tax returns to its financial statements is an admission that its reported sales and costs were inaccurate and that, on this basis, the Department should select facts otherwise available with an adverse inference.

Viraj responds that the Department verified its reported sales and cost information by reconciling it to its audited financial statements. It comments further that the Department has verified and accepted Viraj's methodology for the build-up of costs reported in the COP and constructed-value data files.

Department's Position: In our sales and cost verification report for Viraj, dated April 4, 2005 (Viraj Verification Report), we stated:

> When we asked to review any tax returns that are filed with the government, the officials explained that, if we reviewed the returns, we would not necessarily be able to tie information on the returns to the financial reports because the returns and reports were filed with two separate government authorities in India and these authorities employed different methodologies for the required filings. We asked if the companies reconciled information in the returns with that in the reports in the

> normal course of business and the officials again said that it would not be possible because of the different methodologies.

Viraj Verification Report at 17. In other words, we confirmed with the company officials that Viraj did file tax returns with the Indian government and that it did not reconcile these returns to its financial reports in the ordinary course of business. We did not ask the officials to perform a reconciliation of the returns to the financial reports and, based on their responses, we chose to not review the tax returns. Instead, we performed reconciliations of the costs in the audited financial statements to the costs in the financial accounting systems and reconciliations of costs in the financial accounting systems to the total costs of manufacturing for both VAL and VSL.

There have been instances in the past where, because a respondent company did not have audited financial statements, we attempted to use the company's tax return as an independent source in order to substantiate its questionnaire responses. See *Final Determination of Sales at Less than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427-01 (October 1, 1997); *Final Results of Antidumping Administrative Review: Fresh Cut Flowers from Mexico*, 60 FR 49569-49572 (September 26, 1995). In the current review, it was not necessary to resort to company tax returns in order to substantiate Viraj's responses. Prior to verification, Viraj had submitted audited financial statements for VAL, VSL, and several other Viraj companies to the Department. We examined these statements in detail at verification and performed the aforementioned reconciliations. It was within our discretion to request and examine the company tax returns at verification. The fact that we decided not to pursue this avenue of inquiry does not mean that Viraj failed to participate in the verification or that we were not satisfied with the information it provided at verification.

Thus, the fact that Viraj did not reconcile its tax returns to its financial statements at verification does not constitute a basis for its failure of verification and, consequently, does not provide a basis for the calculation of its final results using adverse facts available.

Collapsing of VAL and VSL

Comment 6: The petitioner requests that the Department reverse its preliminary determination to collapse the Viraj Group companies, an action it maintains would be consistent with a series of rulings by the CIT in appeals of the results of past reviews of the antidumping duty orders on SSWR and stainless steel bar from India to uncollapse the Group companies. The petitioner observes that the collapsing of companies was shown to mask dumping in at least one appeal to date, citing *Carpenter Technology Corp. v. United States*, CIT Court No. 02-00448, Slip Op. 04-103 (August 16, 2004) (*Carpenter*), and adds that the CIT has determined that the Department has no reasonable basis for collapsing in at least two appeals, citing *Carpenter* and *Slater Steels Corp. v. United States*, Court No. 02-00551, Slip Op. 05-23 (February 17, 2005) (*Slater III*). The petitioner argues that, in light of these rulings, it would be unreasonable for the Department to continue to collapse the companies for the final results of this review.

Viraj rebuts that the petitioner's request to reverse the collapsing lacks merit. It asserts that it is the position of the Department that it is not obligated to follow CIT rulings until they are affirmed by the CAFC. Viraj also argues that the factual situations of the current review differ from those of the 1999/2000 review, which are the subject of one of the matters currently before the CIT. It states that, in the current review, both VAL and VSL have the capabilities to produce SSWR independently of one another and that neither VAL nor VSL needs to retool its existing facilities in order to produce the subject merchandise. Viraj also states that the two companies are affiliated through familial relationships and that a significant potential exists for the manipulation of price and production amounts between the two companies. It concludes that, on these bases, the collapsing of the companies is mandated by the record.

Department's Position: We discussed our reasons for collapsing two of the Viraj Group companies, VAL and VSL, in the Memorandum from Edythe Artman to Barbara E. Tillman regarding the collapsing of the companies, dated November 30, 2004 (Collapsing Memorandum). In the Collapsing Memorandum, we found that, as in prior reviews, there were extensive familial relationships between the directors, chairpersons, and shareholders of the two companies and that, as a result of these relationships, we found VAL and VSL to be affiliated under subsections 771(33)(A), (E), and (F) of the Act. Collapsing Memorandum at 4.

We discussed our review of the production capabilities of the companies as follows:

> In summary, VAL could, without substantial undertaking, retool itself to attain the capabilities to pickle and anneal black rods, and VSL could obtain black rods from other sources for resale or for pickling and annealing, or obtain billets for rolling into SSWR. See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France, 67 FR 62114 (October 3, 2002) (collapsing several integrated producers where affiliates performed finishing operations); Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod From Korea, 63 Fed. Reg. 40404 (Jul. 29, 1998) (collapsing integrated steel producer with finishing affiliate). As Viraj is currently configured, VAL produces foreign like product (black SSWR) and VSL can independently produce both black and finished rods. Because of these independent capabilities, both companies can restructure their manufacturing priorities without substantial – or indeed any – retooling.

Id. at 7. In addition, we described the changes in the roles of various Viraj Group companies in the production process of SSWR between the 1999/2000 administrative review and the current review and concluded that, based on this history, the Viraj Group companies produced subject merchandise as a single entity. *Id*. at 8. Therefore, we found that VAL and VSL satisfied the requirement under 19 CFR 351.401(f)(1) to the extent each had production facilities for similar or identical products that would not require substantial, or any, retooling of the other's facility in order to restructure manufacturing priorities. *Id*.

We next evaluated whether there was a significant potential for manipulation of price or production between VAL and VSL, pursuant to 19 CFR 351.401(f)(2). We found that, due to the familial relationships between the chairpersons, directors, and the largest individual shareholders of VAL and VSL, the level of common ownership of the two companies was significant, especially among those parties who exercised a significant influence over price and production decisions. *Id*. In other words, the factor listed under 351.401(f)(2)(I), that of a level of common ownership, was present. We also found that, because the companies shared sales information, were involved in each other's production and pricing decisions, shared facilities, and had significant transactions between themselves, their operations were intertwined, as considered under 351.401(f)(2)(iii). *Id*. Thus, we concluded that, pursuant to 19 CFR 351.401(f)(2), there was a significant potential for manipulation of price or production between VAL and VSL. As a result, we concluded further that, pursuant to 19 CFR 351.401(f), the two affiliated companies should be collapsed and treated as a single entity for purposes of calculating a dumping margin in this review. *Id*. at 9.

The petitioner has cited two cases, *Carpenter* and *Slater III*, in which the CIT remanded the case to the Department for redetermination of the final results. In *Carpenter*, the court remanded the case to the Department for calculation and imposition of individual antidumping duty margins for two Viraj Group companies. *Carpenter* at 10. Upon calculation of the individual margins, the Department found that the companies made sales of subject merchandise at less than normal value during the POR. See the "Final Results of Redetermination Pursuant to Court Remand" relating to Viraj's final results of 1999/2000 administrative review of SSWR from India, dated February 18, 2005. Contrary to the implication of the petitioner's comments, however, the CIT has not yet affirmed these results. Similarly, in *Slater III*, the court remanded the case to the Department for calculation and imposition of individual antidumping duty margins for Viraj Group companies involved in an administrative review of the antidumping duty order on stainless steel bar from India. The Department has until July 18, 2005, to file its results of redetermination pursuant to this remand. Thus, neither of the rulings cited by the petitioner constitutes a final determination by the CIT.

We are not obligated to follow CIT rulings until they are affirmed by the CAFC. Because the cited rulings have not been finalized by the CIT, much less reviewed by the CAFC, they do not persuade us to reverse our preliminary determination to collapse VAL and VSL in the current SSWR review. Moreover, we observe that, in each ruling, the CIT concluded that the collapsing of companies was not warranted because we had not demonstrated to the court that a material change in facts had occurred that supported a shift from our initial decision in the 1997/1998 administrative review of SSWR from India not to collapse the Group companies.

In the current review, we have set forth the factual circumstances that support such a shift. We have explained how the corporate structure and production processes of VAL and VSL meet the statutory and regulatory criteria for collapsing companies into a single entity. Furthermore, we have recounted the history of the roles played by various Group companies throughout several review periods in order to demonstrate that VAL and VSL currently produce subject merchandise as a single entity. We could not have anticipated such an extensive and complex history at the time of our initial decision in the 1997/1998 administrative review. Given the history and information available to us at this time, we conclude that the record supports the collapsing of VAL and VSL for purposes of this review.

Request for Additional Sales and Cost Data

Comment 7: The petitioner asserts that the Department should gather additional information from VAL and VSL in the event of a determination that the two companies should be uncollapsed. It requests specifically that the Department obtain information on sales by VSL to third-country markets and separate COP and constructed-value data files for VAL and VSL. It comments that, without such information, the Department is precluded from being able to calculate separate margins for the two companies in the current review properly.

In support of its request, the petitioner cites *Slater Steels Corp. v. United States*, Court No. 02-00551, Slip Op. 03-108 (August 21, 2003) (*Slater I*), and *Slater Steels Corp. v. United States*, Court No. 02-00551, Slip Op. 04-22 (March 8, 2004) (*Slater II)*, in which the CIT remanded the results of the 2000/2001 administrative review of stainless steel bar to the Department with the observation that it found no support for the Department's decision to collapse certain Viraj Group companies. It adds that, in *Slater III*, the court granted the petitioner's motion for judgment and remanded the results so that the Department could calculate individual antidumping duty margins for the involved companies. The petitioner argues that, based on this precedent, the Department cannot assume that collapsing VAL and VSL in the current review is acceptable. It also observes that, if the Department had collected the information required to calculate separate margins in its redetermination of results for *Slater III* prior to the court's latest instructions, the Department would not have had to request a lengthy extension of time for which to file its redetermination with the CIT.

Viraj responds that its home market meets the Department's criteria of a viable comparison market and that the Department's decision to use VSL's home-market sales in the calculation of the preliminary results for Viraj was correct. It comments that requiring Viraj to submit third-country-market data would add unnecessary hardship to the review process.

Department's Position: We conclude that the record in this review supports the collapsing of VAL and VSL into a single entity for purposes of calculating an antidumping duty margin. We have detailed the factual circumstances of this review that support our conclusion in the Collapsing Memorandum and have discussed them in response to comment 6. We found that these circumstances are such that a material change in facts has occurred in this review that supports a shift from our decision in the 1997/1998 administrative review not to collapse any Group companies. Consequently, we do not need to obtain the additional sales and cost data requested by the petitioner for the calculation of separate margins for VAL and VSL. Furthermore, absent such a need, we find that requesting the additional data from Viraj would constitute an unnecessary burden for that company.

Implicit in its argument, the petitioner asks us to assume that we or a court of appeal will decide to uncollapse the two companies and that, due to the uncollapsing, we will find that the home market no longer qualifies as VSL's comparison market. We have not changed our decision to collapse the companies and, in the event we are instructed to do so at a later date, we may conclude that the home market remains viable for VSL. Thus, even if we did anticipate a reversal of our collapsing decision, it would be premature to request additional information prior to an analysis of potential comparison markets for VSL's sales. Therefore, we have not requested the additional sales and cost data as the petitioner requests.

Revocation

Comment 8: The petitioner argues that, contrary to the preliminary determination in the *Preliminary Results*, the Department should not revoke Viraj from the antidumping duty order pursuant to 19 CFR 351.222(b)(2). It comments that it is very likely that the Department will have to uncollapse Viraj in response to future court rulings and that, once VSL obtains an individual margin, it will not qualify for revocation, in part because there is no evidence that VSL made shipments of subject merchandise prior to the current POR.

The petitioner asserts that, contrary to the Department's finding in the *Preliminary Results*, VSL has not sold subject merchandise to the United States in commercial quantities during the current and previous two PORs. It argues that the quantity benchmark, that of the monthly amount of shipments of SSWR made from January 1991 through August 1993 derived by the Department from CBP data in the preliminary results, was unreasonable on its face. It comments that import statistics included in the ITC's final injury determination of the less-than-fair-value investigation of this proceeding show that the average monthly shipments of SSWR from January 1992 through June 1993 amounted to 612 short tons and that it is reasonable to infer from the CBP data that all of the shipments during this period were made by the same company. It observes that a comparison between this average monthly amount and the average monthly amount shipped by VSL during the POR support its argument regarding sales in commercial quantities.

The petitioner also argues that VAL's status as a "sick" company and other factors demonstrate that Viraj's reported costs omit significant items and provide ample grounds for not revoking VSL or its affiliates from the order. In support of its claim, the petitioner asserts that, as a "sick" company, VAL could and did offset its COP by huge amounts for debt forgiveness, that the Group companies built a power plant for which they have yet to recognize any costs, and that the grade-specific direct material costs reported by VSL differed by market. It asserts further that Viraj's financial records are of questionable reliability, citing an auditors' note in VAL's 2002/2003 and 2003/2004 financial reports to the effect that the company had not maintained proper records concerning the quantitative details and situation of its fixed assets and observing that VSL and its affiliates refused to provide their tax returns to the Department at verification.

The petitioner argues that the Department should determine that revocation cannot be considered until there is a final determination, including the exhaustion of all rights of appeal, of Viraj's dumping margins for the prior two consecutive review periods. The petitioner observes that the final results of the previous three administrative reviews of Viraj's sales remain on appeal to the CIT and that, in the case of the 1999/2000 results, the Department has calculated dumping margins above *de minimis* for individual Group companies and this redetermination of results may be sustained by the court at any time. It states further that the appellate review of the 2000/2001 results has been stayed by the CIT pending the outcome of the appeal of the results of the 2000/2001 administrative review of Viraj's sales of stainless steel bar. The petitioner comments that this appeal is the basis for the *Slater III* decision, in which the court found no justification for the collapsing of Group companies and remanded the results of review to the Department for calculation of individual dumping margins for the involved companies. With respect to the results of the 2001/2002 review of Viraj's sales of SSWR, the petitioner observes that the case is currently pending before the CIT for initial review. It concludes that, given this background, there is no reasonable basis for the Department to reach a decision on revocation before the cases on appeal have been decided with finality, as the pending cases will likely result in the calculation of dumping margins above *de minimis* for individual Group companies.

Finally, the petitioner comments that the Department's considerations in a revocation request are the same as those it considers in an anti-circumvention claim. It observes, moreover, that in *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part*, 65 FR 9243 (February 24, 2000), the Department found that it could not reach a determination of a request for revocation of a company from an order until litigation relating to an anti-circumvention claim relating to the company had been finally resolved. It argues that, as in the cited review, the Department should not revoke Viraj from the antidumping duty order until the claims affecting the basis for the revocation have been finally resolved.

Viraj responds that the Group companies effectively operate as a single entity and that, in the event the companies would be uncollapsed, great potential for price and production manipulation would exist between the companies. Viraj rebuts that it has sold SSWR to the United States in commercial quantities during the current and prior two review periods and that any decline in the quantities sold to the United States over the three periods is attributable to a decline in the U.S. demand for imports of this product. In support of its claim, it refers to import statistics available on the ITC's website, http://dataweb.usitc.gov, that show a decline in imports of SSWR from all countries during the current and prior two review periods. Viraj also comments that the waiver of interest liability on long-term borrowings obtained by VAL in the 2002/2003 fiscal year did not constitute income for that company and that all transactions and events occurring in the fiscal year were recorded in VAL's accounting system properly. It adds that Viraj reported its sales and cost information to the Department based on the audited financial statements of VAL and VSL.

Department's Position: We have addressed the issue of whether to proceed with revocation of Viraj Group companies from an antidumping duty order prior to final resolution of litigation arising from the results of reviews upon which the determination to revoke is based. See *Stainless Steel Bar from India; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke In Part*, 69 FR 55409 (September 14, 2004) (*2002/2003 SS Bar Results)*, and accompanying Issues and Decision Memorandum at comment 3. In those results, we stated:

> We disagree with the petitioners that this action cannot be taken before the litigation in previous segments has been concluded. It is not the Department's policy to delay granting revocation because of pending court appeals. See *e.g., Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation (in Part)*, 59 FR 15159, 15166 (Mar. 31, 1994); *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 4408, 4414 (February 6, 1996). While we acknowledge that the CIT has remanded a portion of one of our prior decisions, it has not yet issued a ruling on our most recent remand redetermination. Moreover, our position in that litigation remains unchanged – namely that the final results were supported by substantial evidence and are fully in accordance with U.S. antidumping law. We note that, even after the remand redetermination, Viraj's margin remains *de minimis*. *See* "Final Results of Redetermination Pursuant to Remand: *Slater Steels Corporation v. United States*, Slip Op. 04-22 (CIT March 8, 2004)", (May 7, 2004). In any event, as the CIT has not rendered a final opinion in the cases under litigation that reverses the

> Department's decisions, we have continued to rely on the margins determined in the segments at issue because we consider them to be valid and reliable.

Comment 3 at 17.

In the current review, the appeals of the 2000/2001 and 2001/2002 results of review remain pending before the CIT, which has yet to issue a decision in either case. The petitioner asks us to assume that these appeals will result in findings that U.S. sales were made at less than normal value due to the calculation of dumping margins for individual Viraj Group companies. It asks us, based on that assumption, to not revoke Viraj from the antidumping duty order at this time. As in *2002/2003 SS Bar Results*, however, we are confident that our final results on appeal are supported by substantial evidence and are fully in accordance with the provisions of the antidumping law. Furthermore, as explained in response to comment 6 above, the factual circumstances on the record support our finding that it is appropriate to collapse VAL and VSL for purposes of the current review. Regardless of these considerations, we are guided by *2002/2003 SS Bar Results* to proceed with revocation of a company from an order where we have found that the criteria of 19 CFR 351.222(b)(2) have been met and the results of review upon which we base our revocation determination have yet to be reversed by a court of appeal. Thus, we are not persuaded by the petitioner's argument that revocation should not granted until final resolution of all relevant litigation.

The petitioner also argues that consideration of a request for revocation was analogous to an anti-circumvention claim in *2002/2003 SS Bar Results*, where we commented as follows:

> We also disagree with the petitioners that the circumstances here are similar to those involving pending anti-circumvention claims. As part of its revocation analysis under 19 CFR 351.222(b)(2)(I), the Department must determine whether the continued application of the antidumping order is otherwise necessary to offset

> dumping. It is entirely reasonable for the Department to consider a company's commercial behavior under the existing antidumping order (and any attempts to evade that antidumping order) in the context of this analysis. In contrast, here we have found that Viraj exported subject merchandise to the United States in commercial quantities for three years, and no party to the proceeding has alleged that Viraj has attempted to circumvent the antidumping order. Thus, we have no reason before us to question that Viraj's past commercial behavior will not be an accurate reflection of its future experience, and we have made our revocation decision accordingly. *Id.*

Similarly, we found that Viraj exported subject merchandise to the United States in commercial quantities for three years in our preliminary results. See "Memorandum to the File" regarding the analysis of the preliminary results of review for VAL and VSL, dated December 30, 2004 (Viraj Analysis Memorandum), at 5. We continue to find that Viraj meets this criterion for revocation because, although the petitioner provided data intended to refute our quantity benchmark, the quantities shipped by Viraj so exceeded the benchmark that we can reach no other conclusion. The fact that Viraj's shipments did not meet the petitioner's benchmark of 612 short tons/month, the calculation of which we are unable to replicate from the ITC statistics, is not dispositive of the issue. In addition, we find that no party to the proceeding has alleged that Viraj has attempted to circumvent the antidumping duty order. Thus, we have no reason in the current review to question that Viraj's past commercial behavior will not be an accurate reflection of its future experience.

Finally, the petitioner's assertions regarding Viraj's accounting practices and its omissions of costs have been raised in the context of other comments to the preliminary results, and we have addressed them in that context. Thus, for reasons that appear in positions elsewhere in this memorandum, we find the assertions are without merit and that Viraj's reported information is acceptable for calculation of the final results. Therefore, following our stated intent in the

Preliminary Results, we have revoked VAL and VSL from the antidumping duty order on SSWR from India pursuant to 19 CFR 351.222(b)(2).

Credit Expenses

Comment 9: The petitioner asserts that the Department used incorrect interest rates in the *Preliminary Results* to calculate home-market and U.S. imputed credit expenses for Viraj.

The petitioner claims that, because the Department's verification report established that the Indian rupee interest rate reported by Viraj was not representative of the short-term borrowing experience of Viraj in rupees, the Department should not have requested at verification that Viraj provide interest-rate information from the RBI. The petitioner also asserts that the Department should not have used these RBI rates to calculate Viraj's home-market imputed credit expense. According to the petitioner, the purpose of verification is to verify the accuracy of information already on the record of the proceeding, not to gather new factual information. The petitioner argues that, as facts available, in place of the RBI interest rates which the Department used in the *Preliminary Results*, the Department should apply a rupee-based interest rate of zero in its calculation of imputed credit expense on all home-market sales. The petitioner claims that the use of a zero-rupee interest rate would be appropriate due to Viraj's failure to report an accurate rupee interest rate and due to indications on VAL's financial report that short-term borrowing at interest rates of zero was available to Viraj during the POR.

The petitioner also claims that the U.S. dollar interest rate was reported to the Department by Viraj inaccurately because the Department could not tie information submitted in Exhibit S1-9 of the supplemental questionnaire response to lending incurred by Viraj during the POR. The petitioner argues that, as an adverse inference, at a minimum, the Department should apply to all U.S. sales the highest per-unit credit expense it calculated for the *Preliminary Results*.

The petitioner also asserts that, if the Department determines to continue using the new rupee interest rate it obtained at verification to calculate the home-market credit expense, it should make a similar adjustment to the reported U.S. interest rate. The petitioner states that the original rupee interest rate reported by Viraj was based on the Indian prime rate. The petitioner argues that, because the Department substituted a higher rupee interest rate, it should make a similar upward adjustment to the U.S. dollar interest rate which Viraj used.

Viraj argues that none of the Viraj Group companies had short-term borrowings during the POR and this fact is supported by the audited financial statements which the Department verified. Viraj asserts that, because it did not have any rupee short-term borrowings during the POR, it used a rupee interest rate based on an independent borrowing contract which it provided to the Department at verification. According to Viraj, because the Department decided not to accept this information at verification, it provided the Department with a list of publicly available short-term interest rates from the RBI.

Viraj also claims that, because it did not have any U.S. short-term borrowings during the POR, it calculated an interest rate using information in the Department's Policy Bulletin 98.2, which can be found on the Department's web-site. Viraj argues that the Department used these rates in the *Preliminary Results* and has not questioned its validity. For these reasons, Viraj requests that, for the final results, the Department continue to use the interest rate it used in the calculation of credit expenses in the *Preliminary Results*.

Department's Position: When a respondent has no short-term borrowings during the review period, the Department will use publicly available information to establish a short-term interest rate and, thus, may accept external information about the cost of borrowing in the relevant currency. The available information used to establish a surrogate interest rate should be reasonable, readily obtainable, and representative of "usual commercial behavior." See *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 65 FR 13943 (March 15, 2000), and accompanying Issues and Decision Memorandum at comment 23. In the instant case, as a proxy for the foreign short-term interest rate, Viraj submitted a bank notice from an unaffiliated business contact with short-term lending during the POR. See Viraj Verification Report at page 12. As we stated in our Viraj Verification Report, because we were unable to tie the reported interest rate to lending incurred by Viraj during the POR, we found that Viraj had no information upon which to base a home-market short-term interest rate. When a respondent does not have short-term borrowings, it is the Department's preference to use published average short-term interest rates, such as the published interest-rate information from the RBI, covering the POR. See Import Administration Policy Bulletin Number 98.2 (February 23, 1998). The petitioner has not questioned the validity of the short-term interest-rate information we obtained at verification but rather has challenged whether we can request and accept such information at verification. Pursuant to 19 CFR 351.301(c)(2), notwithstanding paragraph (b) of this section, which sets time limits upon the submission of new factual information, the Department has the discretion to request and accept information from any interested party at any time during the proceeding. In this case, we found it appropriate to use the interest-rate information from the RBI because the respondent had no short-term borrowing during the POR, the information is publicly available, it provides a reasonable proxy for foreign short-term interest rates, and it is representative of usual commercial behavior in India. In addition, because no interested party has disputed the validity of the RBI information, we find it appropriate to continue using such information in our calculation for imputed home-market credit expenses for the final results of review.

We disagree with the petitioner's argument that the record shows that VAL's financial statements indicate that it had commercial short-term borrowing at interest rates of zero and, therefore, as an adverse inference, we should set the rupee interest rate to zero. VAL's financial statement indicates that it had "interest free unsecured loans," which the financial statement indicated are inter-company loans. Inter-company loans from affiliated parties are not a reasonable proxy for short-term borrowing when publicly available short-term interest rates representative of commercial behavior in India are available on the record. Thus, we find the petitioner's argument unpersuasive.

We also disagree with the petitioner's claim that Viraj's U.S. dollar interest rate is inaccurate. As we stated in our Viraj Verification Report at page 12, we confirmed at verification that Viraj had no short-term U.S. dollar borrowing and we found no evidence that Viraj's U.S. affiliate, Viraj USA, Inc. (VUI), had short-term borrowing in the United States during the POR. In addition, we found Viraj's use of the information in the Department's Policy Bulletin 98.2 in order to calculate a surrogate short-term interest rate to be reasonable and consistent with our practice. Further, we found no discrepancies with Viraj's calculation and, therefore, we find the petitioner's argument to be without merit. For these reasons, we have used Viraj's calculated U.S. short-term interest rate for the final results of this review.

Indirect Selling Expenses Incurred in the Country of Manufacture

Comment 10: The petitioner argues that, pursuant to section 772(d)(1)(D) of the Act, the Department must deduct selling expenses incurred by Viraj Impoexpo, Ltd. (VIL), from the CEP for U.S. sales in which VIL served as a vehicle for facilitating export transactions. It suggests that the Department calculate VIL's selling expenses by applying a factor of 4.6 percent to the reported U.S. gross unit price. The petitioner explains that it obtained this factor by reviewing VIL's 2003/2004 profit and loss statement and dividing the total for non-manufacturing operating expenses, including payments to employees, administrative and selling expenses, interest expenses, and depreciation costs, by the amount of total sales.

Viraj responds that the Department's methodology in the *Preliminary Results* for calculating VSL's indirect selling expenses accounts correctly for any selling expenses incurred by VIL. It argues that allocating VSL's indirect selling expenses over the total amount of sales of products that it produced, as opposed to those that it produced and exported, is the most appropriate methodology for reflecting any selling expenses VIL incurred. Viraj also asserts that the petitioner errs in its calculation of a selling-expense factor for VIL. It rebuts that the payments to employees included in the total for non-manufacturing operating expenses reflect the labor costs of VIL's production staff, that the depreciation included in the total relates to the depreciation of VIL's plant and machinery and other assets, and that VIL's administrative and interest expenses included in the total are not related to the sales of subject merchandise.

Department's Position: At verification, we examined the sales of subject merchandise between VSL and VUI, that involved the banking facility of another Viraj Group company:

> VSL made "merchant-export" sales through {Viraj Forgings, Ltd. (VFL)} and VIL to VUI during the POR. This type of sale is recorded as a local merchant-export sale, or a domestic sale, in VSL's accounting system. Similarly, VSL made merchant-export sales that were export sales on behalf of other Viraj Group companies. Company officials explained that the Group companies make merchant-export sales because of Indian law that imposes limits on the amount of banking facility that is provided to a company at a given time. Thus, whether VSL sells merchandise as a direct export sale to VUI or as a merchant-export sale through another Group company to VUI depends on the availability of a company's banking facility at the time of the sale.

Viraj Verification Report at 7.

We also reviewed the calculation of the indirect selling expenses VSL incurred in the country of manufacture:

> We expressed our concern to company officials that, in the case of the merchant-export sales made by Viraj Group affiliates to the United States, this factor did not capture the expenses incurred by the affiliates (*i.e.*, VFL and VIL). The assistant manager acknowledged that, in all likelihood, the affiliates did incur some indirect selling expenses in arranging the shipment of merchandise to the United States but added that VSL likewise incurred such expenses on its merchant-export sales of merchandise for the affiliates that were included in the factor. He reasoned that the expenses incurred by the different companies thus cancelled each other. After consideration of these circumstances, we proposed that the officials revise their calculation of the expense factor so that the denominator only includes sales of wire and wire rod, thus allocating VSL's expenses over sales of merchandise it produced instead of sales of merchandise it produced and that which it sold on behalf of affiliates. We requested this change in order to offset any expenses that may have been incurred by VFL and VIL on the U.S. sales. The officials agreed with our request . . . .

Viraj Verification Report at 15.

We relied upon this re-calculation of expenses in our preliminary results of review. See Viraj Analysis Memorandum at 2.

The record does not allow us to compare the expenses incurred by one company with that of another, in part because it only contains the total indirect selling expenses incurred by VSL during the POR and in part because there is no way to segregate, by company, expenses attributable to the use of banking facilities from those expenses incurred in other selling functions. Thus, to ensure that any indirect selling expenses incurred by VIL or VFL are captured in the deduction of selling expenses from CEP, we find that it is appropriate to adopt the more conservative approach to calculating VSL's indirect selling expenses. By limiting the denominator of its selling-expense factor to sales of its own products, we have increased the amount of VSL's indirect selling expenses attributable to all of its sales of subject merchandise. Therefore, we have continued to use the same calculation for our final results upon which we relied in our preliminary results.

The petitioner's attempt to calculate a separate expense factor for VIL underscores the difficulty in segregating the expense of one function, that of providing banking facilities, from the expense of all other selling functions. Even if VIL's selling expenses could be isolated from the operating expenses listed in its financial report, the record provides no basis for the attribution of the selling expenses between different functions. Because it seems reasonable to conclude that the expense incurred by a company for the provision of banking facilities is relatively insignificant to that expense incurred for other, labor-intensive selling functions, we must also conclude that our conservative approach to the calculation of VSL's indirect selling expenses more than likely offsets any expenses incurred by VFL or VIL in the sales of subject merchandise.

<u>Direct Material Costs</u>

<u>Comment 11</u>: The petitioner asserts that Viraj reported grade-specific direct material costs that differed by market and that such differences are inappropriate. It observes that, although the costs in the COP data file reflect the COP for "black", unfinished rod and the costs in the

constructed-value data file reflect the costs for finished rod, this difference should result in a difference in labor and overhead costs and not in direct material costs. The petitioner adds that, assuming production occurs simultaneous to the date of sale, the differences in costs cannot be attributed to a variation of costs during production periods because the sales of common grades took place throughout the POR. It requests that the Department correct the reported cost data by selecting the highest grade-specific cost reported in either market for use in its calculation of the final results or, at a minimum, by averaging the grade-specific costs for these results.

Viraj responds that the petitioner is incorrect in its assertions because the reported direct material cost in the COP data file only reflects the raw material costs VAL incurred in the production of black rod, whereas the direct material cost in the constructed-value data file reflects VAL's total COM and VSL's raw-material costs in the production of finished rod. By referring to a cost build-up in exhibit 20 of the Viraj Verification Report, Viraj demonstrates this difference in the reported costs for one grade. It comments that the Department has verified and accepted its methodology for calculating costs and that application of the DIFMER test allows for the proper comparison of merchandise sold in the U.S. and home markets.

Department's Position: We agree with Viraj that it has reported its direct material costs for the home and U.S. markets on the same basis. In other words, the grade-specific amount of VAL's raw material costs included in the COP and constructed-value data files are the same and any difference between the reported direct material amounts in those files is attributable to differences in the production costs of black and finished rod. As illustrated by Viraj in its analysis of the cost build-up in exhibit 20 of the Department's verification report, the constructed-value direct-material amount includes VAL's costs for raw materials, direct labor, variable overhead, fixed overhead, G&A expenses, interest expenses, rolling charges paid by VAL to a sub-contractor, and VSL's additional raw material cost. At verification, we reviewed the reported costs for both VAL and VSL and found no discrepancies.

The petitioner asserts that any difference in production costs between the product sold in the home market and that sold in the United States should relate to labor and overhead costs and should not have an impact on raw-material costs. Because the raw-material cost for VSL consists of the cost of black rod produced by VAL, however, the COM of this product must be reflected in the direct material amounts reported in the constructed-value data file. Thus, Viraj reported its direct material costs in its COP and constructed-value data files correctly and, consequently, we have relied on this data in our final results.

Costs of Affiliated Power Company

Comment 12: The petitioner argues that, to the extent that the Viraj Group companies are collapsed, costs associated with the construction and set-up of Viraj Power, Limited (VPwL), must be considered as part of the Group costs. Specifically, it asserts that depreciation of VPwL assets should be included in these costs even if, as asserted in Viraj's questionnaire responses, the Viraj power company was not operational during the POR.

Viraj responds that it cannot develop an arbitrary depreciation schedule for assets that are not operational. It observes that VPwL's 2003/2004 financial statement establishes that the company was not operational during the POR and states that, once the company is operational, Viraj will attribute depreciation cost to the Group company that is the recipient of the generated power.

Department's Position: At verification, we examined notes of the audited 2003/2004 financial report of VPwL in order to confirm that the company was not operational during the POR. See Viraj Verification Report at 4 and exhibit 2. At that time, Viraj explained why it was not economical for VPwL to generate power for the other Group companies prior to and during the POR. See Viraj Verification Report at 3-4. We found no information in the company responses or at verification to suggest that VPwL was in fact operational and supplying power to VAL or VSL during the POR. Furthermore, a review of the balance sheets in VPwL's 2002/2003 and 2003/2004 financial reports show that no depreciation was claimed by the company in either fiscal year. Based on these findings, we conclude that the petitioner's claim for the addition of costs associated with VPwL, including depreciation, to Group costs to be without merit.

VAL's Fixed Overhead Costs

Comment 13: The petitioner asserts that the ratio of VAL's total depreciation to its total manufacturing costs in its 2002/2003 and 2003/2004 financial statements reveals that VAL's fixed overhead costs are implausibly low for a capital-intensive operation such as steel melting and casting. The petitioner also observes that both financial reports contain an auditors' note commenting on the fact that VAL had not maintained "proper records showing full particulars including quantitative details and situation of its fixed assets." See VAL's 2002/2003 Financial Report at 4 and VAL's 2003/2004 Financial Report at 3. The petitioner concludes that, at a minimum, the ratio of VAL's reported fixed overhead costs to its reported total manufacturing costs should be corrected to reflect the depreciation ratios that the petitioner derived from the VAL financial statements.

Viraj responds that, because fixed overhead cost is calculated on a per-metric-ton basis, the analysis of this cost as a ratio of total manufacturing cost will vary by grade and is thus distortive. It explains that the depreciation amounts in VAL's financial statements reflect the depreciation claimed on assets used in the production of billets as well as those assets used in the production of non-subject merchandise. Viraj comments that, in its calculation of VAL's reported fixed overhead cost, it reduced the depreciation attributed to the POR by amounts allocated to the use of equipment in the production of the non-subject merchandise. It adds that, when the total, unreduced amount of depreciation for the POR is compared to the fiscal-year totals of depreciation for VAL, the POR total exceeds the fiscal-year totals.

Department's Position: Because ratios of fixed overhead costs to manufacturing costs can vary due to differences in the denominator, they do not serve to illustrate that Viraj has underreported its fixed overhead costs. Although VAL's total depreciation costs for the fiscal years 2002/2003 and 2003/2004 are nearly the same amount, the total COM for 2003/2004 is nearly double that of the previous year. Hence, the ratio of depreciation cost to manufacturing cost for 2003/2004 is roughly one-half that of the previous year despite the fact that the amount of depreciation claimed in either year is approximately the same. Thus, we cannot conclude from this type of analysis that depreciation or other fixed overhead expenses have been underreported.

VAL's financial reports for 2002/2003 and 2003/2004 include an auditors' note commenting on the fact that the company had not maintained proper records detailing the quantity and situation of its fixed assets. In the same note in each report, however, the auditors added that management had "physically verified major fixed assets" during the year and that, based on the information the company provided to the auditing firm, "no discrepancies {had} been arrived in respect of the assets." See VAL's 2002/2003 Financial Report at 4 and VAL's 2003/2004 Financial Report at 3. In the 2002/2003 financial report, the auditors also commented that none of the fixed assets had been revalued during the year and, in the successive report, the auditors indicated that the company had not disposed of a substantial part of its fixed assets. *Id.* Thus, although the auditing firm referred to improper record-keeping concerning the details of VAL's fixed assets, it accepted the company's financial accounting of these assets and found no discrepancies in this accounting. Therefore, we do not find that the auditors' notes provide a sufficient basis for us to question the fixed overhead costs that Viraj reported for VAL.

We verified these reported costs by reviewing account entries and by confirming that all fixed overhead accounts were listed on the calculation worksheet that Viraj submitted in exhibit 11 of its response to the COP questionnaire. See Viraj Verification Report at 19 and 20. This worksheet shows the amounts of depreciation that Viraj allocated to the operations of the rolling-mill division (*i.e.*, equipment used only in the production of non-subject merchandise) and thus deducted from VAL's depreciation attributed to the POR. We confirmed the calculation of the per-metric-ton amount for fixed overhead cost at verification. *Id.* We found no discrepancies with the reported cost.

In light of our findings at verification and because we are unpersuaded by the petitioner's assertions that Viraj has underreported its fixed overhead costs for VAL, we have continued to use the reported per-unit cost for our calculations of the final results.

Interest Expenses

Comment 14: The petitioner asserts that VSL's interest expenses should not have been offset by amounts for interest on post-shipment credit or bank charges and that VAL's interest expenses should not have excluded amounts for interest debentures and interest on a term loan.

Viraj rebuts that it reported actual interest expenses as recorded in its financial accounting system. It states that VSL's expenses were offset by amounts that it reported as direct expenses in its U.S. sales response and comments that, if the Department included these amounts in the calculation of its interest expense, the result would be double-counting of the expenses for post-shipment credit and bank charges. With respect to VAL's expenses, Viraj states that the amounts for interest on a term loan constitute a written-back interest amount that nullifies an unpaid interest amount. It asserts that such an amount, which is an extraordinary item, cannot be considered as an interest expense.

Department's Position: A review of Viraj's interest-expense calculation for VSL shows that, in deriving the totals for three accounts, one relating to interest on post-shipment credit and two relating to bank charges, Viraj listed all such amounts as expenses and then subtracted them from the total of interest expenses because it had reported them as direct expenses in its U.S. sales response. See exhibit 7 of Viraj's response to the COP questionnaire, revised and resubmitted to the Department in pre-verification corrections dated October 15, 2004. A review of the U.S. sales response confirms that Viraj reported amounts in its U.S. sales data file for credit expenses (CREDITU) and for bank charges directly identifiable to export shipments (DIRSEL1U). We reviewed the documentation and calculation of these expenses at verification and found no discrepancies. See Viraj Verification Report at 13 and exhibit 6. Thus, we do not agree with the petitioner that the three account totals were offset improperly from the interest-expense calculation. Rather, Viraj excluded them from this calculation and reported direct expenses included in these totals elsewhere in its response.

A review of the calculation for VAL's interest expenses shows that the amount for interest debentures that the petitioner asserts was excluded from the interest expenses ties to the 2002/2003 financial statement. See exhibit 11 of Viraj's revised October 15, 2004, COP response for this calculation. In accordance with our practice, Viraj calculated its interest-expense ratio based on expenses it incurred in the 2003/2004 fiscal year because this year is most proximate to the POR. Further review of exhibit 11 shows that Viraj did include the expenses incurred in the interest-debentures account during the 2003/2004 fiscal year in its calculation of VAL's interest expenses.

The worksheet in exhibit 11 also shows that two account totals for interest on a term loan that the petitioner asserts Viraj excluded from the expense calculation tie to the 2002/2003 financial statement. These two account totals reflect the write-down of long-standing interest debt that resulted in the sick-company status of VAL. See Viraj Verification Report at 4 for a discussion of this interest debt. At verification, we examined documentation from the lending bank regarding the settlement of this debt. See exhibit 22 of the Viraj Verification Report. Because the write-down was reported during the 2002/2003 fiscal year, Viraj correctly excluded it from the interest-expense calculation which was based on the 2003/2004 fiscal year. The 2003/2004 financial statement shows an interest write-down amount in that year, however, this item constitutes income rather than an expense and was properly excluded from the interest-expense calculation.

In light of all of these findings, we do not find that adjustments are warranted to the interest-expense calculations for VSL or VAL.

G&A Expenses

Comment 15: The petitioner argues that the G&A expenses that Viraj claimed for VAL and VSL are unreasonable. It asserts that the Department should disallow deductions Viraj made for travel and telephone expenses from VSL's expenses. In addition, it observes that VAL's 2002/2003 financial report contains an auditors' note for "contingent liabilities not provided for" that lists an amount of 444 million rupees for "guarantees given on behalf of Group Companies for their Working Capital limits" and comments that this amount represents an increase of 29 million rupees over the previous year. The petitioner asserts that the 2002/2003 amount for contingent liabilities should be included in the calculation of VAL's G&A expenses. It also observes that both the 2002/2003 and 2003/2004 financial reports contain an auditors' note concerning the lack of provision for the diminution in the value of investment in quoted equity shares and states that this diminution, stated as 10.853 million rupees in the 2002/2003 report and 17.038 million rupees in the 2003/2004 report, should be included in VAL's G&A expenses.

Viraj responds that, in its calculation for VSL, it listed all of the company's annual administrative expenses and then subtracted the expenses that it had reported as indirect selling expenses for VSL in order to avoid double-counting these expenses. Viraj rebuts that, in accordance with the accrual basis of accounting followed by the Viraj Group companies, VAL does not recognize contingent liabilities as expenses until a liability to pay arises and, consequently, VAL has accounted for all of its expenses in its financial statements. It also comments that VAL incurs no loss by holding long-term investments and that profit or loss from such investments are only realized at the time of their sale.

Department's Position: The calculation of VSL's G&A expenses appears in exhibit 6 of Viraj's COP response, revised and resubmitted to the Department in pre-verification corrections dated October 15, 2004. A review of this calculation worksheet shows that Viraj added the amounts for three accounts relating to travel and telephone expenses to the G&A expenses and then deducted the amounts from them because it had reported expenses from the three accounts as indirect selling expenses elsewhere in its questionnaire response. We accepted the calculation of the factor for indirect selling expenses, applied to sales in both markets, as a correction at verification; it shows amounts listed from these three accounts. See exhibit 1 of the Viraj Verification Report. We observe that the account amounts are not the same in the two calculations because G&A expenses are calculated on a fiscal-year basis whereas the selling expense factor was calculated based on expenses that VSL incurred during the POR. As we stated in our verification report, we selected the accounts for foreign traveling and for telephone expenses at verification, reviewed all of the entries in these two accounts, and examined supporting documentation for selected entries. We found that all of the entries were appropriate to the selected accounts and that the account balances tied to the expense totals listed on the selling expense calculation worksheet. See Viraj Verification Report at 12.

Thus, we find that, contrary to the petitioner's assertion, the expenses relating to travel and telephone expenses were not offset from claimed G&A expenses but were excluded from the calculation of G&A expenses. Furthermore, we find that Viraj reported expenses from the three accounts correctly as indirect selling expenses incurred by VSL. Therefore, we find that an adjustment to VSL's G&A expenses is not warranted.

We also find no merit to the petitioner's claims regarding the calculation of VAL's G&A expenses. The "contingent liability not accounted for" is not due to a liability incurred as a result of VAL's operations but instead represents an increase in guarantees given on behalf of Group companies for their working capital. The expenses were not recorded in VAL's financial accounting system but instead reported as a note in the financial statements indicating that the company could potentially be liable for the debt of other Group companies. In addition, VAL should not report a cost on the diminution of value of long-term investments. It is our practice to exclude gains and losses associated with a company's investment activities from the calculation of G&A expenses. See *Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil*, 70 FR 7243 (February 11, 2005), and accompanying Issues and Decision Memorandum at comment 8. Thus, we find that Viraj's exclusion of the cost relating to the value of long-term investments in its calculation of VSL's G&A expenses was proper.

<u>Duty Drawback</u>

<u>Comment 16</u>: Viraj argues that the Department should either deduct from reported costs, or add to the U.S. sales price, the amount of duty that it saves on imports through the Indian government's Duty Entitlement Passbook Scheme (DEPB) as duty drawback. Viraj states that, when using DEPB credits to purchase imports of a raw material, it enters the credited amount as both cost and income in its accounting system. Viraj asserts that, although it is not actually

paying the credited amount of duties, the Department should adjust its calculations in order to reflect the actual costs Viraj incurred in the production of subject merchandise.

The petitioner states that Viraj argues that import duties should not be included in costs to the extent that DEPB credits do not qualify as duty-drawback adjustments to export price. It urges the Department to reject Viraj's argument and continue to include the import duties in the COP because it is undisputed that import duties were due on imports and that the exact method of settlement of the duties is immaterial. The petitioner comments that, in the 1997/1998 administrative review, the Department denied both Viraj's claim for duty drawback and a reduction of material costs based on the receipt of DEPB benefits, citing comment 3 of the issues and decision memorandum accompanying *Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 65 FR 31302 (May 17, 2000) (*1997/1998 Final Results*). It adds that, because Viraj did not report an amount for import duties in its COP data file, the Department should increase the COP amounts reported in that file based on the grade-specific duty-drawback amounts reported in the constructed-value data file.

Department's Position: In the *1997/1998 Final Results*, we denied Viraj's claim for duty drawback. We explained our decision as follows:

> {A}n analysis of {information obtained at verification} does not demonstrate that the import duty paid and the duty drawback rebate were directly linked. Rather, they demonstrate that the amount of duty rebated is tied to the FOB price of the exported merchandise, and that the amount of drawback credit is determined by the Government of India's pre-established determination of import content of the exported merchandise. By relying on a pre-determined, assumed amount of import content, this method fails to link the rebate received to the amount of import duties actually paid on raw materials actually imported. Consequently . . . we have determined that a duty drawback adjustment under section 772(c)(1)(B) of the Act is not warranted.

1997/1998 Final Results at comment 3.

In the current review, Viraj reported drawback amounts in its constructed-value and U.S. data files. At verification, company officials stated that VSL obtained DEPB certificates upon export of its products and that VAL used the DEPB credits against its imports of raw materials. Viraj Verification Report at 14. The officials were unable to provide documentation that linked the issuing of the certificates directly to the importation and use of raw materials in the production of subject merchandise because of the retroactive nature of the drawback scheme. *Id*. In the *Preliminary Results*, we denied the claim for drawback on the basis that Viraj had not provided sufficient evidence on the record to demonstrate that a direct link existed between the import duties it paid and the amount the government rebated upon exportation of the subject merchandise. See Viraj Analysis Memorandum at 5. We also found that the information Viraj submitted indicated that the DEPB credits were based on the FOB value of the goods to be exported rather than on the amount of the import duties paid. *Id.*

Thus, we denied Viraj's claim for drawback in the 1997/1998 and current reviews on the same bases. As described in the *1997/1998 Final Results*, there is no evidence on the record of this review that the DEPB scheme implemented by the Indian government has been altered, at least concerning the need for a link between import duties paid and rebates upon export, since the time we issued that determination. Viraj continues to receive DEPB credits based on the FOB value of exports which it then applies to the purchase of raw materials it uses in the production of merchandise. This retroactive scheme, where credits issued for past exports are applied to import purchases, does not meet the Department's criteria for a duty-drawback adjustment under section 772(c)(1)(B) of the Act. Therefore, we continue to deny Viraj's claim.

Viraj has argued in part that, to the extent that it is able to apply DEPB credits toward import duties, it has not actually incurred a cost in the production of subject merchandise. The petitioner has countered that the duties represent a cost to the respondent regardless of the means used to settle that cost. We addressed this issue recently in *Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at comment 2, where we explained our policy of adding duty costs to COP even where the company does not record such costs in its normal books and records because exempted duties and rebates are "real costs and revenues faced by the company." In doing so, we commented that, "[s]ince the Department uniformly calculates a single cost of production which incorporates the cost of producing both exported and domestically sold finished products, that calculation must include the cost of duties." *Id*. Thus, for these final results, we have added the claimed duty drawback amounts to the COM totals in the constructed-value data file because Viraj had reported these totals net of the drawback amounts and we have made no adjustments to the COM totals in the COP data because these totals are not net of drawback amounts.

Constructed-Value Profit Rate

Comment 17: The petitioner requests that, for U.S. sales of Viraj in which the Department resorts to the use of constructed value for the calculation of normal value, the Department apply an industry average profit ratio of 17.52 percent as the constructed-value profit rate. For details regarding the suggested industry-average profit ratio, it refers the Department to the case brief it filed on May 20, 2005, pertaining to the preliminary results of review for Chandan.

Viraj responds that the Department calculated a CEP profit rate based on Viraj's reported home-market and U.S. sales information in the preliminary results and, given that this information is available and acceptable to the Department, it asserts that the Department should continue to rely on it for calculation of the CEP profit rate.

Department's Position: We did not resort to the use of constructed value in any of our price comparisons for Viraj in the calculation of its final results. Hence, it was not necessary to calculate a constructed-value profit rate for this company. Viraj's rebuttal comment concerning the CEP profit rate is inapplicable to the issue of the calculation of a constructed-value profit rate.

Clerical Error in the Calculation of CEP Profit

Comment 18: Viraj argues that, because the Department denied its claim for duty drawback, the amount of the drawback for each model should be added to the total COM reported in the constructed-value data file (TOTCOMCV) for the calculation of CEP profit. Viraj states that it had reported TOTCOMCV net of the duty-drawback amounts and that the Department erred in using this total amount in the calculation of CEP profit in the preliminary results in light of its denial of the claim for drawback. It asserts that, if the Department continues to deny this claim in the final results, then the drawback amounts should be added to TOTCOMCV so that the Department is consistent in its treatment of this cost in all of its calculations.

The petitioner comments that, in making any changes to the CEP profit calculation, the Department must ensure that the costs it uses are consistent with those used to calculate the total COM amounts and those used to calculate constructed value.

Department's Position: As discussed in response to comment 16 above, we have continued to deny Viraj's claim for duty drawback and have found that the costs in TOTCOMCV should include any claimed drawback amounts. Moreover, we agree with both parties that our treatment of costs should be consistent in all calculations. Therefore, we have added the claimed drawback amounts to TOTCOMCV for calculation of our final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed firms in the *Federal Register*.

Agree _________ Disagree _________

____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

____
Date